

Exhibit No.:	_____
Issue(s):	Response to Merger Impact
Witness/Type of Exhibit:	Marke/Rebuttal
Sponsoring Party:	Public Counsel
Case No.:	EM-2016-0213

REBUTTAL TESTIMONY

OF

GEOFF MARKE

Submitted on Behalf of the Office of the Public Counsel

**THE EMPIRE DISTRICT ELECTRIC COMPANY, LIBERTY UTILITIES
(CENTRAL) CO. AND LIBERTY SUB CORP.**

CASE NO. EM-2016-0213

July 20, 2016

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REBUTTAL TESTIMONY

OF

GEOFF MARKE

**EMPIRE DISTRICT ELECTRIC COMPANY (ELECTRIC)
EMPIRE DISTRICT GAS COMPANY, THE-INVESTOR (GAS)
LIBERTY UTILITIES (CENTRAL) CO. INVESTOR (ELECTRIC)
LIBERTY SUB CORP. INVESTOR (ELECTRIC)
CASE NO. EM-2016-0213**

1 **I. INTRODUCTION**

2 **Q. Please state your name, title and business address.**

3 A. Dr. Geoffrey Marke, Economist, Office of the Public Counsel (OPC or Public Counsel), P.O.
4 Box 2230, Jefferson City, Missouri 65102.

5 **Q. Please describe your education and employment background.**

6 A. I received a Bachelor of Arts Degree in English from The Citadel, a Masters of Arts Degree
7 in English from The University of Missouri—St. Louis, and a Doctorate of Philosophy in
8 Public Policy Analysis from Saint Louis University (“SLU”). At SLU, I served as a graduate
9 assistant where I taught undergraduate and graduate course work in urban policy and public
10 finance. I also conducted mixed-method research in transportation policy, economic
11 development, and emergency management.

12 I have been in my present position with OPC since 2014 where I have been responsible for
13 economic analysis and policy research in electric and gas utility operations. Prior to joining
14 OPC, I was employed by the Missouri Public Service Commission (“Commission”) where
15 my primary duties involved reviewing, analyzing, and writing recommendations concerning
16 electric integrated resource planning, renewable energy standards, and demand-side
17 management programs for all investor-owned electric utilities in Missouri. I also have been
18 employed by the Missouri Department of Natural Resources (later transferred to the
19 Department of Economic Development), Energy Division where I served as the lead policy
20 analyst on electric cases. I have worked in the private sector, most notably serving as the
21 Lead Researcher for Funston Advisory based out of Detroit, Michigan. My experience with

1 Funston involved a variety of specialized consulting engagements with both private and
2 public entities.

3 **Q. Have you been a member of, or participated in, any work groups, committees, or other**
4 **groups that have addressed electric utility regulation and policy issues?**

5 A. Yes. I am currently a member of the National Association of State Consumer Advocates
6 (NASUCA) Distributed Energy Resource Committee, which shares information and
7 establishes policies regarding energy efficiency, renewable generation, and demand-side
8 management, and considers best practices for the development of cost-effective programs
9 that promote fairness and value for all consumers. I also serve as a member on NASUCA's
10 Electricity Committee and NASUCA's Water Committee each tasked with analyzing current
11 issues affecting residential consumers.

12 **Q. Have you testified previously before the Missouri Public Service Commission?**

13 A. Yes. A listing of the cases in which I previously have filed testimony and/or comments
14 before this commission is attached in GM-R1.

15 **Q. Please identify other OPC witnesses in this proceeding.**

16 A. In addition to my testimony, Ara Azad and Ryan Pfaff are filing testimony on behalf of
17 the OPC. Ms. Azad will address concerns regarding: Ratepayer Protections pertaining to
18 Accounting and Tax Issues, Transaction and Transition Costs, Energy Efficiency and
19 Load Research, and Costs of Empire's Customer Information System; Employment in the
20 State of Missouri; Charitable Contributions and Community Support; and Affiliate
21 Transaction and Cost Allocation Matters. Ms. Azad will also testify on OPC's proposed
22 Most Favored Nation condition.

23 Mr. Pfaff will address concerns regarding: Corporate Governance and Ring-Fencing
24 Provisions, matters related to Corporate Social Responsibility, and recommendations
25 regarding a proposed Bill Credit and a Rate Case Moratorium. Mr. Pfaff will also provide

1 an overall review of the merits of the case, including the significant risks that will be
2 transferred to ratepayers if the proposed merger is approved.

3 **Q. What is the purpose of your rebuttal testimony?**

4 A. The purpose of this rebuttal testimony is to respond to the Applicant's merger impact
5 assessments articulated in the direct testimonies of:

- 6 • Liberty Utilities ("LU") witness David Pasieka;
- 7 • LU witness Peter Eichler;
- 8 • LU witness Christopher D. Krygier; and
- 9 • Empire District Electric ("Empire") witness Brad P. Beecher

10 **Q. Please state OPC's position on the proposed acquisition application.**

11 A. OPC recommends the Commission reject the application of the proposed acquisition as it
12 would result in a detriment to ratepayers. As it stands, Empire ratepayers and regulators
13 operate under the assurance of a known, stable local utility with over one-hundred years of
14 operating experience. Approval of this acquisition would represent an increase in orders of
15 magnitude at the level of organizational and affiliate complexity as well as a heightened risk
16 of diluted managerial and fiduciary responsibility. There are no proposed standards from
17 which to judge success, no cost-savings benchmarks to strive towards, and no proposed ring-
18 fence provisions to ensure captive ratepayers will not be exposed to increased harm. Instead,
19 there are only aspirational, vague and often redundant claims of benefits generalized across
20 four testimonies.

21 An acquisition designed to ensure no net detriment to ratepayers must offer enforceable
22 promises—promises made possible by the acquisition: promises about new products or
23 services, permanent cost savings, new forms of responsiveness to customers, reductions in
24 outages or increased customer response time. At a minimum, these promises should be
25 sufficient for the Commission to conclude that any incremental detriments of the proposed

1 merger are properly mitigated and/or offset by corresponding benefits. Instead the prevailing
2 “benefits” can be summed as follows: 1) “nothing will change;” and 2) Empire’s leadership
3 and fiduciary responsibility will now be extended to all of LU Central’s utilities in Texas,
4 Arkansas, Iowa, Illinois and Missouri.

5 The former is unrealistic and runs counter to Liberty’s own corporate strategy over the past
6 five years (in which seven utilities were acquired) and the latter cannot reasonably be claimed
7 a benefit.

8 A no-net detriment standard must not be judged as merely a decline from the immediate
9 *status quo*. Doing so ignores less immediate, less tangible harm that can afflict complicated
10 holding company structures: harm from excess debt, internal conflicts for capital, as well as
11 pressures on local utility management to satisfy parent company goals that diverge from the
12 utility’s obligation to serve. Successful regulation should replicate the pressures of
13 competition and therefore produce a public interest.¹ Speaking on the public interest standard
14 for mergers and acquisitions, regulatory expert Scott Hempling provides the following
15 analogy for the Commission to consider when evaluating an application:

16 Which doctor would you choose for your child—the one who finds nothing
17 wrong or the one who prescribes the best diet, exercise and sleep practices?²

18 **II. RESPONSE TO MERGER IMPACT**

19 **Q. Please list the transaction benefits asserted by LU witnesses Pasieka and Krygier.**

20 A. Both witnesses testimony include identical language in listing and describing seven general
21 benefits for ratepayers the Company believes result from the acquisition. They include:

- 22 1. Efficiency of Scale;
- 23 2. Increased Management Capability;
- 24 3. Enhanced regional senior leadership support;

¹ Hempling, S. (2014) “No Harm” Vs. “Positive Benefits”: The wrong conversation about merger standards.
<http://www.scotthemplinglaw.com/essays/no-harm-vs-positive-benefits>

² Ibid.

- 1 4. Board of Directors for LU Central;
- 2 5. Enhanced financial capabilities;
- 3 6. Maintenance of jobs; and
- 4 7. Seamless transition^{3,4}

5 **Q. Are there explicit benefits from “efficiency of scale” as a result of this acquisition?**

6 A. No. The argument for increased size is asserted without evidence and is listed merely as an
7 aspiration:

8 This scale **is expected** to result in greater management expertise, access to
9 broader management capabilities, and an ability to capitalize on greater
10 opportunities for **future efficiencies** (emphasis added).⁵

11 Whether bigger is better cannot be determined through generalities and cannot stand on
12 aspirations alone. Moreover, the parties are proposing no standards or benchmarks from
13 which to support its assertion. Finally, far from a benefit, it is unclear how ratepayers are not
14 at a disadvantage from having Empire’s current management expand their operational scope
15 and fiduciary responsibilities to utilities beyond Empire. The application fails to offer a
16 standard that would allow a reasonable person to support this acquisition.

17 **Q. Are there explicit benefits from “increased management capability” as a result of this
18 acquisition?**

19 A. No. This statement does not merit its own distinct category and is merely an extension of the
20 first so-called “benefit.” Restated, there is no way to know how increasing Empire’s
21 management responsibility to include gas operations in Montrose, Iowa benefit electric
22 ratepayers in Joplin, Missouri. By diluting the managerial oversight from Empire Electric to
23 Liberty Central, there is also an increased risk in the potential of a conflict of interest between
24 utilities.

³ Direct Testimony of David Pasioka, p. 5 through p. 7, 5.

⁴ Direct Testimony of Christopher D. Krygier, p. 6 through p. 8, 8.

⁵ Ibid, p. 6, 10-12.

1 **Q. Are there explicit benefits from “enhanced regional senior leadership support” as a**
2 **result of this acquisition?**

3 A. No. Again, this statement does not merit its own distinct category and is merely an extension
4 of the first (and second) so-called “benefit.” The Company’s argument for enhanced regional
5 senior leadership is described as follows:

6 By reorganizing Liberty Utilities’ operations under East, Central, and West
7 regional divisions, each utility will now have closer access to senior level
8 leadership.⁶

9 This premise is without foundation. As Empire ratepayer’s already have “local” access to
10 senior level leadership in the form of Empire’s current senior level leadership. This is a
11 benefit that Empire ratepayers enjoy under the utility’s existing obligations. Diluting that
12 benefit by minimizing local leadership for regional leadership would be better characterized
13 as a detriment.

14 **Q. Are there explicit benefits from the creation of a “Board of Directors for LU Central”**
15 **as a result of this acquisition?**

16 A. No. It is unclear how expanding Empire’s existing board of directors (“BOD”) to the
17 newly—created LU Central is at all beneficial to Empire ratepayers and not a potential
18 liability. In short, Empire ratepayers would be surrendering a leadership board previously
19 commensurate with fiduciary duties solely to Empire alone to those of all utilities operating
20 in the proposed LU Central territory.

21 Equally troubling is this proposal only represents the immediate, tangible risk inherent with
22 expanded BOD responsibility of known entities. Consider for a moment if LU Central elects
23 to make additional acquisitions of other regulated or even non-regulated operations. There is
24 no plan outlined as to what ring-fence protection Empire ratepayers would have if LU

⁶ Ibid, p. 7, 5-7.

1 Central overextends itself. No thought is given or explanation provided on the potential
2 unintended consequences such arrangement could create.

3 **Q. Are there explicit benefits from the “enhanced financial capabilities” as a result of this**
4 **acquisition?**

5 A. I would direct the Commission to the rebuttal testimony of OPC witnesses Azad and Pfaff on
6 this matter.

7 **Q. Are there explicit benefits from the assertion that all current employees will “maintain**
8 **jobs” as a result of this acquisition?**

9 A. No. LU witnesses Pasioka and Krygier assert that there will be no involuntary workforce
10 reduction associated with this transaction. This same sentiment is repeated in LU witness
11 Peter Eichler’s testimony:

12 While there will be no involuntary job losses within the Empire group, it is
13 anticipated that, through natural attrition, an additional \$2.2 million in labor
14 savings will emerge. This is supported by Empire’s 2-6% rate of annual
15 attrition through employee turnover and retirements.⁷

16 To be clear, this is a “benefit” unrelated to the merger. Empire’s 2-6% rate of annual attrition
17 through employee turnover and retirement would happen regardless of whether or not Liberty
18 acquires it. Therefore, this is not a “benefit” conferred as a result of the proposed acquisition.
19 Further analysis of the applicant’s proposed employment levels are discussed in greater detail
20 in the rebuttal testimony of OPC witnesses Azad and Pffaf.

21 **Q. Has there been any assurance that the acquisition will be a “seamless transition?”**

22 A. No. On May 16th, 2016 parties met in Jefferson City for a technical session in which a
23 PowerPoint slide deck was presented by the applicants specifically informing stakeholders on
24 its transition plan to merge operations with its present affiliates in the newly created Liberty
25 Central. Of particular note was a slide stating that a meeting was planned for June 2-3 in

⁷ Direct Testimony of Peter Eichler, p. 12 through p. 16-19.

1 which “teams” would be formed to develop a Transition Plan for their function with guidance
2 and support from the Project Management Office.

3 On May 20th, OPC submitted data requests 2019-2022 and then received the following
4 responses on June 13th. Those requests and responses are as follows:

5 **OPC DR-2019.** Please provide any and all templates for each “team” as
6 referenced in the Missouri Technical Session slide deck
7 presented in Jefferson City, MO. on May 16, 2016, slide
8 #24 entitled Transition Governance Approach. Specifically,
9 within the second bullet point, which states:

10 *Each team develops a Transition Plan for their function*
11 *with guidance and support from the Project Management*
12 *Office (PMO)—templates will be provided.*

13 **Response:**

14 Transition teams are holding regular phone conferences to
15 discuss transition planning issues, but have not finalized
16 transition template documents. Once these are finalized
17 they will be produced.
18
19

20
21 **OPC DR-2020** In reference to OPC DR-2019 (stated above). Please
22 provide a copy of each and every “teams” specific
23 Transition Plan. Additionally,
24

25 a) Please include copies developed for each team listed on slide
26 27 entitled Transition Team Leads from the aforementioned
27 report. If said team has no report please provide a narrative
28 explanation as to why no report was produced.

29 **Response:**

30 See response to OPC – Marke – No. 2019. Once such
31 reports are completed, they will be produced.
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OPC DR-2021. In reference to OPC DR-2020 (stated above), if said plans have not been completed yet. Please provide completed copies following the June 2-3 Transition Team meets in Joplin.

Response: Please see the response to OPC-Marke—No. 2019.

OPC DR-2022. In reference to OPC DR-2021, please provide any and all documents (including but not limited to: handouts, reports, presentations) from the June 2-3 Transition Team meets in Joplin.

Response: The June 2-3 Transition Team meeting was rescheduled due to scheduling conflicts. The Joint Applicants will produce responsive documents once the meeting occurs.

It is now July 20th and OPC has not received any further documentation or confirmation on the transition status of the applicants or identified synergistic benefits. It is my understanding that steps have been taken to address this through a discovery conference and additional information may be forthcoming in surrebuttal testimony.

It is important to remember that prior to the application, the parties had literally as long as they felt they needed to prepare their case. As it stands, it is unclear how the application supports the assertion that the transfer of control would result in a “seamless transition” that would not be detrimental to the public interest, let alone provide a benefit. The absence of any such evidence raises serious doubt as to the veracity of such a pronouncement.

1 **Q. What are your recommendations?**

2 A. OPC recommends that the Commission reject the application of the proposed acquisition as it
3 would result in a detriment to Missouri retail ratepayers. Further deficiencies as well as
4 proposed recommendations to mitigate risk and minimize the overall determinant to the
5 public interest may be found in the rebuttal testimony of OPC witnesses Azad and Pfaff.

6 **Q. Does this conclude your testimony?**

7 A. Yes, it does.

CASE PARTICPATION OF
GEOFF MARKE, PH.D.

Company Name	Employed Agency	Case Number	Issues
Empire District Electric Company, Empire District Gas Company, Liberty Utilities (Central) Company, Liberty Sub-Corp.	Office of Public Counsel (OPC)	EM-2016-0213	Rebuttal: Response to Merger Impact
Empire District Electric Company	OPC	ER-2016-0023	Rebuttal: Rate Design, Demand-Side Management, Low-Income Weatherization Surrebuttal: Demand-Side Management, Low-Income Weatherization, Monthly Bill Average
Missouri American Water	OPC	WR-2015-0301	Direct: Consolidated Tariff Pricing / Rate Design Study Rebuttal: District Consolidation/Rate Design/Residential Usage/Decoupling Rebuttal: Demand-Side Management (DSM)/ Supply-Side Management (SSM) Surrebuttal: District Consolidation/Decoupling Mechanism/Residential Usage/SSM/DSM/Special Contracts
Working Case: Decoupling Mechanism	OPC	AW-2015-0282	Memorandum: Response to Comments
Rule Making	OPC	EW-2015-0105	Missouri Energy Efficiency Investment Act Rule Revisions, Comments
Union Electric Company d/b/a Ameren Missouri	OPC	EO-2015-0084	Triennial Integrated Resource Planning Comments
Union Electric Company d/b/a Ameren Missouri	OPC	EO-2015-0055	Rebuttal: Demand-Side Investment Mechanism / MEEIA Cycle II Application Surrebuttal: Potential Study / Overearnings / Program Design Supplemental Direct: Third-party mediator (Delphi Panel) / Performance Incentive Supplemental Rebuttal: Select Differences between Stipulations

The Empire District Electric Company	OPC	EO-2015-0042	Integrated Resource Planning: Special Contemporary Topics Comments
KCP&L Greater Missouri Operations Company	OPC	EO-2015-0041	Integrated Resource Planning: Special Contemporary Topics Comments
Kansas City Power & Light	OPC	EO-2015-0040	Integrated Resource Planning: Special Contemporary Topics Comments
Union Electric Company d/b/a Ameren Missouri	OPC	EO-2015-0039	Integrated Resource Planning: Special Contemporary Topics Comments
Union Electric Company d/b/a Ameren Missouri	OPC	EO-2015-0029	Ameren MEEIA Cycle I Prudence Review Comments
Kansas City Power & Light	OPC	ER-2014-0370	Direct (Revenue Requirement): Solar Rebates Rebuttal: Rate Design / Low-Income Weatherization / Solar Rebates Surrebuttal: Economic Considerations/ Rate Design / Cyber Security Tracker
Rule Making	OPC	EX-2014-0352	Net Metering and Renewable Energy Standard Rule Revisions, Comments
The Empire District Electric Company	OPC	ER-2014-0351	Rebuttal: Rate Design/Energy Efficiency and Low-Income Considerations
Working Case: Utility Pay Stations and Loan Companies	OPC	AW-2014-0329	Comments: Response to Staff Report
Union Electric Company d/b/a Ameren Missouri	OPC	ER-2014-0258	Direct: Rate Design/Cost of Service Study/Economic Development Rider Rebuttal: Rate Design/ Cost of Service/ Low Income Considerations Surrebuttal: Rate Design/ Cost-of-Service/ Economic Development Rider
KCP&L Greater Missouri Operations Company	OPC	EO-2014-0189	Rebuttal: CAM Sufficiency of Filing Surrebuttal: CAM Sufficiency of Filing
KCP&L Greater Missouri Operations Company	OPC	EO-2014-0151	Renewable Energy Standard Rate Adjustment Mechanism (RESRAM) Comments
Liberty Natural Gas	OPC	GR-2014-0152	Surrebuttal: Energy Efficiency
Summit Natural Gas	OPC	GR-2014-0086	Rebuttal: Energy Efficiency Surrebuttal: Energy Efficiency
Union Electric Company d/b/a Ameren Missouri	OPC	ER-2012-0142	Direct: PY2013 EM&V results / Rebound Effect Rebuttal: PY2013 EM&V results Surrebuttal: PY2013 EM&V results
Kansas City Power & Light	Missouri Public Service Commission Staff	EO-2014-0095	Rebuttal: MEEIA Cycle I Application testimony adopted
KCP&L Greater Missouri Operations Company	Missouri Division of Energy (DE)	EO-2014-0065	Integrated Resource Planning: Special Contemporary Topics Comments

Kansas City Power & Light	DE	EO-2014-0064	Integrated Resource Planning: Special Contemporary Topics Comments
The Empire District Electric Company	DE	EO-2014-0063	Integrated Resource Planning: Special Contemporary Topics Comments
Union Electric Company d/b/a Ameren Missouri	DE	EO-2014-0062	Integrated Resource Planning: Special Contemporary Topics Comments
The Empire District Electric Company	DE	EO-2013-0547	Triennial Integrated Resource Planning Comments